

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBRA KEHRES : CIVIL ACTION  
 :  
 v. :  
 :  
 JEFFREY KLINE, et al. : NO. 03-6108

MEMORANDUM AND ORDER

McLaughlin, J.

December 7, 2004

Debra Kehres brings this action against her former employer, Tri-Valley Pharmacy, and her former boss, Jeffrey Kline, alleging claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"); the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.* ("ADEA"); and the Pennsylvania Human Relations Act, 43 Pa.C.S. §§ 951 *et seq.* ("PHRA"). The Court held a bench trial on August 27, 2004, and now awards judgment to the defendants and against the plaintiff on all claims.

I. Findings of Fact

Debra Kehres worked as a registered pharmacist at Tri-Valley Pharmacy from July 2, 2001, until February 22, 2002, when she was fired by Jeffrey Kline. Tri-Valley Pharmacy is co-owned by Jeffrey and April Kline.

At the time of Kehres' employment, the Klines owned three different Tri-Valley Pharmacy stores: the Tremont store,

the Pine Grove store, and the Valley View store. Kehres worked at the Tremont store approximately 80% of the time that it was open. Another pharmacist, Forrest Jewel, worked at the Tremont store on Kehres' day off, every other Monday. On a typical day, two to three employees worked at each store: a pharmacist; a store manager/clerk/pharmacy technician; and a part-time clerk/pharmacy technician.

Kline fired Kehres at the end of her shift on February 22, 2002. Kline gave Kehres two reasons for her termination: failure to follow Tri-Valley Pharmacy's policy for partially filling prescriptions when there was an insufficient amount of medication in stock; and failure to follow proper procedures related to Pennsylvania's PACE prescription benefit program.

Prior to working at Tri-Valley pharmacy, Kehres co-owned a pharmacy in Hilton, New York. In 1996, Kehres was convicted in New York of one felony count of grand larceny in the second degree based on charges involving insurance fraud in connection with that pharmacy. Kehres served fourteen months in a New York state prison and ten months in a work release program. In 1998, Kehres surrendered her New York pharmacy license.

In 1995, prior to her conviction, Kehres filed an application and became licensed by reciprocity in Pennsylvania. In June, 1999, as a result of her criminal conviction and surrender of her New York license, the Pennsylvania State Board

of Pharmacy suspended Kehres' license for a period of three years. Kehres entered into a consent decree with the State Board of Pharmacy whereby the suspension was immediately stayed in favor of probation, subject to certain conditions. Kehres was required, among other things, to provide a copy of the consent decree to any current or future employer and to submit evaluations from her employer to the Probation Department's Bureau of Enforcement and Investigation ("BEI").

Kehres told Kline about the conviction and consent decree when he interviewed her for the position at Tri-Valley Pharmacy. Throughout her employment, either Jeffrey Kline or his father George Kline, a registered pharmacist and the previous owner of Tri-Valley Pharmacy, completed Kehres' performance evaluations on a form provided by BEI. The form included a space to evaluate the individual in the following four categories: attendance, work performance, interaction with co-workers, and interaction with customers. Throughout her employment, Kehres received the highest rating of "good" in all categories. A statement at the bottom of the form indicated that the evaluation was intended for probation purposes only and did not represent the professional performance of the individual.

On July 9, 2001, approximately one week after Kehres was hired, Kline sent two additional employees, Gary Keefer and Michelle Ruhl, to the Tremont store to work with Kehres. Keefer

is Kline's stepson and is employed by Tri-Valley Pharmacy as a cashier/pharmacy technician. Ruhl is also employed by Tri-Valley Pharmacy as a cashier/pharmacy technician.

During that work day, Kehres observed Ruhl sitting on Keefer's lap in the pharmacy area of the Tremont store. Ruhl had her arm around Keefer's neck, and she was rubbing Keefer's back. Keefer was caressing Ruhl's leg, just above her knee, and Ruhl was whispering in Keefer's ear. Kehres could not hear what they were saying. This incident lasted approximately twenty minutes. Jackie Sieger, the Tremont store manager, was also present during this incident. Neither Kehres nor Sieger said anything to Keefer or Ruhl about their conduct. Kehres testified that she felt embarrassed, humiliated, outraged, and astonished by Keefer and Ruhl's conduct in the pharmacy.

Later that same day, Kehres told Kline that Keefer and Ruhl were "fooling around" in the pharmacy. Kehres did not describe Keefer and Ruhl's behavior to Kline, and Kehres did not tell Kline that Ruhl was sitting on Keefer's lap. Kline asked Kehres if his father came by the pharmacy and said that his father did not get along with Keefer. Kline did not take disciplinary action against Keefer or Ruhl, but these individuals were never again assigned to work together with Kehres. Kehres testified that, after she complained to Kline about Keefer and Ruhl's conduct, Ruhl started to behave unprofessionally toward

Kehres.

Kline terminated Kehres, in part, because Kehres failed to follow Tri-Valley's "give and owe" procedure. When the pharmacy did not have a sufficient amount of medication to fill a prescription, Tri-Valley's "give and owe" procedure was used to record the amount of medication given to the customer and the amount of medication still owed to the customer.

Tri-Valley uses "give and owe" tags - two adhesive labels that are printed on a slip of paper. The "give" tag records the amount of medication actually provided to the customer. It is removed from the slip of paper and attached to the customer's medicine bottle at the time that the prescription is initially filled. The "owe" tag remains on the slip of paper and is kept in a small box at the pharmacy until the customer returns for the remainder of his or her medication. When the customer returns, the "owe" tag is removed from the slip of paper and is attached to the customer's medicine bottle with the remaining medication.

After the customer's prescription is completely filled, and both tags are removed from the slip of paper, the customer signs the paper and it is attached to the back of the original prescription. The original prescription, with the slip of paper attached, is then filed in a cabinet at the pharmacy.

The initials of the pharmacist who originally filled

the "give" part of the prescription appear on the slip of paper that is retained by the pharmacy. It is not possible to determine, by looking at that slip of paper, which pharmacist filled the "owe" part of the prescription and was responsible for placing the tag in the filing cabinet.

Although Kehres was never provided a written copy of Tri-Valley Pharmacy's "give and owe" procedure, she was able to testify about the correct procedure in detail at trial. In the months leading to her termination, Kline told Kehres, on three separate occasions, that she was not following the correct "give and owe" procedure. Kline also asked the Tremont store manager, Jackie Sieger, to tell Kehres to follow the correct "give and owe" procedure. Kline never recorded any deficiencies in Kehres' performance in writing.

Kehres failed to follow Tri-Valley's "give and owe" procedure by not filing the slip of paper with the customer's signature after the "owe" part of the prescription was filled. When Kline confronted Kehres about her failure to follow the policy, Kehres showed Kline that she was placing the slips of paper in an envelope by date order. On a separate occasion, Kline found approximately 100 signed slips in a manilla envelope in the back of a file drawer. A date range was written on the front of the envelope in Kehres' handwriting.

Forrest Jewel worked at the Tremont store on Kehres'

day off. Jewel complained to Kline that he was unable to follow Kehres' work for "give and owe" prescriptions and could not determine if the pharmacy owed medication to patients.

Kehres testified that she found several dozen "give and owe" tags in a box in the basement of her home after she was fired by Tri-Valley Pharmacy. According to Kehres' testimony, she had used this box to carry left-over Chinese food home from work. Kehres testified that her husband found the "give and owe" tags in the box while he was tearing the box apart in the basement of their home. Kehres testified that she did not know how the tags got into the box, and she did not recall when she brought this box into her home.

Some of the "give and owe" tags that Kehres found in her basement include the initials of other pharmacists, including Forrest Jewel and Randy Chapman. Chapman was not on Tri-Valley's payroll, but he filled in as a per diem pharmacist at the Tremont store on one occasion during Kehres' employment with Tri-Valley Pharmacy.

The Court does not find the plaintiff's testimony on this issue credible. The Court does not find it plausible that, even if the slips of paper were in this box, the plaintiff would fail to notice the slips during the time that she placed food in the box, carried the box home, and then removed the food from the box. This story simply does not make sense. The Court does not

make a finding as to how the slips of paper came to be in Kehres' possession; but, as the Court shows in the analysis section of this memorandum, the fact that Kehres' had these slips in her possession after she was fired by Tri-Valley actually supports the defendants' position that Kehres failed to follow the "give and owe" procedure.

Kline ultimately decided to fire Kehres after he learned that Kehres knowingly mis-charged a patient for a prescription. This incident occurred approximately one week prior to Kehres' discharge and involved Kehres' decision to charge an ineligible customer the co-payment under Pennsylvania's PACE prescription benefit program.

The Commonwealth of Pennsylvania administers the PACE program to assist qualified individuals with the cost of prescription drugs. Kehres' responsibilities at Tri-Valley Pharmacy included checking a computer database to determine whether patients were eligible for PACE benefits. If a patient was eligible for PACE benefits, the patient could pay a \$6.00 co-payment for medication rather than the retail price of the drug.

Kehres was familiar with an individual, identified at trial by the initials E.H., as a customer at Tri-Valley Pharmacy. On or about Friday, February 15, 2002, Kehres assisted a relative of E.H. at the Tremont store. The relative picked up E.H.'s prescriptions that were previously called in; dropped off two new



prescriptions that were to be delivered to E.H.; and dropped off an application to renew E.H.'s PACE benefits.

Kehres knew that E.H. had been eligible for PACE benefits in the past, but that E.H. was not currently eligible for benefits. Accordingly, Kehres charged the relative the full retail price of the prescriptions that he picked up that day. Kehres mailed E.H.'s PACE application from the Tremont Post Office and faxed a copy of E.H.'s PACE application from her home fax machine.

E.H.'s new prescriptions included Darvocet, a drug to relieve pain, and Fosomax, a drug to promote bone growth. Kehres filled E.H.'s prescription for Darvocet because Kehres believed, in her professional judgment, that E.H. needed the pain medication. Kehres also believed that E.H. could wait until her PACE benefits went into effect to begin taking the bone growth medication.

When Kehres filled out the delivery slip for E.H.'s new medicine, she charged E.H. the PACE co-payment, \$6.00, rather than the full retail price of the pain medication, \$21.29. Kehres testified that she believed the pharmacy would be reimbursed for the difference between the co-payment and the retail price of the drug after E.H.'s PACE benefits went into effect.

Kehres did not tell E.H.'s relative that she intended

to charge only the co-payment. When Tri-Valley's delivery person delivered the medicine, E.H. questioned the amount of the co-payment and said that she didn't realize that her PACE benefits had been reinstated. E.H. said that if she was eligible for PACE benefits, she wanted her other medication to be delivered. The delivery person later confirmed with the Tremont store manager, Jackie Sieger, that E.H. was not eligible for PACE benefits.

Three days later, on Monday, February 18, 2002, Tri-Valley's delivery person told Kline that Kehres charged E.H. the PACE co-payment even though the customer was not eligible for PACE benefits. Kline confronted Kehres the following day, February 19, 2002, and asked why she charged the co-payment. Kehres told Kline that she knew the patient was not covered by PACE but said that she felt sorry for the patient because the patient could not afford the medicine.

During that conversation, Kline instructed Kehres to call E.H. and tell her that she was mis-charged for the medication and still owed the difference. Kehres prepared a slip for the delivery person to pick-up the money from E.H. Kehres wrote a note to E.H. stating that Kehres had faxed E.H.'s paperwork but that E.H. was not yet eligible for PACE benefits. Later that day, Kehres decided to pay the difference between the retail price of E.H.'s drug and the PACE co-payment herself. Kline learned that Kehres paid the difference in price after

checking the cash register receipt the next day, February 20, 2002.

Kline decided to terminate Kehres on February 20, 2002. Kline did not actually fire Kehres that day because he needed to find another pharmacist to replace her. The Tremont store could not be opened without a licensed pharmacist on the premises.

Prior to learning about the E.H. incident, Kline had hired a new pharmacist, Gene Fisher, to work part-time at the Valley View store. Kline hired Fisher to help the full-time pharmacist, Forrest Jewel, compound prescriptions. On February 20, 2002, Kline asked Fisher if he would be interested in a full-time position. Fisher agreed to work full-time.

On February 22, 2002, the day that Kehres was fired by Kline, Kehres was involved in a confrontation with Ruhl concerning a patient's prescription. On that day, at approximately 2:00 in the afternoon, a social worker tried to pick up a prescription for a patient at Tri-Valley Pharmacy's Tremont store. Kehres learned that the patient had called the prescription in to the Pine Grove store earlier that morning.

Kehres called the Pine Grove store and spoke to Ruhl concerning the patient's prescription. Ruhl told Kehres that the prescription was already filled at the Pine Grove store and that the patient should pick it up there. Kehres then spoke to Tony, the pharmacist at the Pine Grove store. Tony gave Kehres the

patient's prescription information, and Kehres filled the prescription at the Tremont store.

Later that same day, on February 22, 2002, at approximately 6:00 in the afternoon, Kline entered the Tremont store and told Kehres that she was fired. Kline told Kehres that she was being fired due to the incident involving E.H.'s PACE benefits, as well as Kehres' failure to follow Tri-Valley's "give and owe" policy.

On or about February 18, 2002, four days before Kehres was fired, Jeffrey and April Kline visited the Pine Grove store while Kehres was working for the regular pharmacist. April Kline invited Kehres to join her for a cup of coffee. April Kline told Kehres that she and Jeffrey Kline were thrilled and happy that they found Kehres to work for them. Additionally, in January, 2002, Jeffrey Kline approved Kehres' request for vacation time in May, 2002.

Kehres is a woman, and she was 56 years old on the day that she was fired. At the time that Kehres was fired, Tri-Valley Pharmacy employed 20 people, including Kehres and her replacement. Thirteen out of 20 employees were female; 14 out of 20 employees were over age 40; and 7 out of 20 employees were older than Kehres. Tri-Valley employed three female store managers and one part-time female pharmacist.

After Kehres was fired, Forrest Jewel became the full-

time pharmacist at the Tremont store. Gene Fisher, the pharmacist that Kline hired to replace Kehres, became the full-time pharmacist at the Valley View store. At that time, Jewel was approximately 66 years old, and Fisher was either 54 or 55 years old.

## II. Analysis

The plaintiff brings claims alleging sex discrimination and retaliation in violation of Title VII; age discrimination in violation of the ADEA; and sex and age discrimination in violation of the PHRA. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Supreme Court set forth a three-step burden shifting framework for discrimination cases under Title VII. Id. at 802-04. The Third Circuit has adopted a slightly modified version of the McDonnell Douglas framework in ADEA cases. Showalter v. Univ. of Pittsburgh Med. Ctr., 190 F.3d 231, 234 (3d Cir. 1999) (citations omitted). PHRA claims are analyzed under the same legal framework as Title VII and ADEA claims. Simpson v. Kay Jewelers, Inc., 142 F.3d 639, 643-44 n. 4 (3d Cir. 1998); Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996).

Under the McDonnell Douglas framework, the plaintiff must first produce evidence sufficient to establish a prima facie case of discrimination. 411 U.S. at 802. A prima facie case creates an inference of unlawful discrimination. Texas Dep't of

Cnty. Affairs v. Burdine, 450 U.S. 248, 254 (1981). If the employee is unable to establish a prima facie case, no inference of discrimination is raised and the employer has no burden to proffer a reason for its action.

If the plaintiff establishes a prima facie case, the burden of production, but not the burden of persuasion, shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. Burdine, 450 U.S. at 253-55; Showalter, 190 F.3d at 235 (internal quotations and citations omitted).

If the defendant carries this burden of production, the plaintiff may prove, by a preponderance of the evidence, that the defendant's articulated reason was not the actual reason, but rather a pretext for unlawful discrimination. Burdine, 450 U.S. at 256. The plaintiff may meet this burden by offering evidence that the defendants' reasons are not worthy of credence or that a discriminatory reason was more likely than not a motivating or determinative cause of the employer's action. Showalter, 190 F.3d at 235. The plaintiff always carries the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against her. Burdine, 450 U.S. at 253.

The Court finds that (1) Kehres failed to establish a prima facie case for any of her claims; and (2) she failed to carry her ultimate burden of persuasion under step-three of the

McDonnell Douglas framework.

A. Step One – The Plaintiff Must Establish a Prima Facie Case of Unlawful Discrimination

1. Sex Discrimination Claim

To establish a prima facie case of sex discrimination under Title VII, the plaintiff must establish that: (1) she is a member of the protected class; (2) she was qualified for the position; (3) she was terminated; and (4) others not in the protected class were treated more favorably. Hankins v. Temple Univ., 829 F.2d 437, 440 (3d Cir. 1987). The Court finds that the plaintiff did not establish a prima facie case for sex discrimination.

Although the plaintiff is a woman who was terminated from a position for which she was qualified, the plaintiff failed to introduce sufficient evidence to establish that men were treated more favorably. The plaintiff did not establish that men who committed comparable infractions of Tri-Valley's policies and procedures were not disciplined or discharged. The Court will address this issue further in its discussion of the third step of the McDonnell Douglas analysis.

2. Retaliation Claim

The plaintiff contends that the defendants' unlawful

discrimination started the day she complained to Kline about her co-workers' inappropriate conduct in the pharmacy. To establish a prima facie case of retaliation under Title VII, the plaintiff must show that she: (1) was engaged in protected activity; (2) was discharged subsequent to or contemporaneously with such activity; and (3) there is a causal link between the protected activity and the discharge. Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997).

As to the first element, Kehres told Kline that her co-workers, Keefer and Ruhl, were "fooling around" in the pharmacy. Kehres did not provide details, and she did not tell Kline that Ruhl was sitting on Keefer's lap. The Court finds it doubtful that this one complaint can be considered "protected activity" under Title VII.

Further, the plaintiff failed to introduce evidence of a causal link between her complaint and subsequent discharge. Although passage of time does not necessarily destroy a causal link, the Court should consider the temporal proximity between the protected activity and the termination. Id. The Court should also consider evidence of an employer's pattern of antagonism toward the employee during any intervening period. Id. at 920-21.

Here, Kehres complained to Kline about her co-workers' behavior one week after Kehres started working at Tri-Valley



Pharmacy. The plaintiff failed to introduce any evidence that the defendants engaged in retaliatory conduct during the intervening seven months before her termination. The plaintiff was not demoted, she was not reassigned, and she was not disciplined. To the contrary, if it can be said that any action was taken in response to the incident, Keefer and Ruhl were never again assigned to work together with Kehres at the Tremont location.

Kehres testified that Ruhl started to behave unprofessionally toward her after Kehres complained to Kline about Ruhl's conduct. Kehres was involved in a confrontation with Ruhl concerning a patient's prescription the day that she was fired. Kehres contends that Ruhl's antagonism, which started after Kehres complained to Kline about Ruhl's conduct, played a role in Kline's decision to fire Kehres.

Here, the plaintiff attempts to rely on evidence that a co-worker acted unprofessionally toward her to establish the causal relationship between her complaint and subsequent termination. The plaintiff failed to introduce any evidence to suggest that her employer engaged in a pattern of antagonism or that her employer was even aware of Ruhl's attitude toward the plaintiff. The Court finds that, because the plaintiff failed to establish a causal link between her complaint and Kline's subsequent decision to discharge her, the plaintiff has failed to

prove a prima facie case for retaliation under Title VII.

### 3. Age Discrimination Claim

To establish a prima facie case of age discrimination under the ADEA, the plaintiff must prove that: (1) she was a member of the protected class, i.e., she was over 40 years of age; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) she was replaced by a sufficiently younger person to create an inference of age discrimination. Connors v. Chrysler Fin. Corp., 160 F.3d 971, 973-74 (3d Cir. 1998); Ryder v. Westinghouse Elec. Corp., 128 F.3d 128, 136 (3d Cir. 1997).

The Court finds that the plaintiff introduced sufficient evidence to establish the first three elements. The plaintiff was 56 years old; she was a licensed pharmacist; and she was discharged by her employer. The Court finds, however, that the plaintiff failed to establish the fourth element.

To satisfy the fourth element of a prima facie case of age discrimination under the ADEA, the plaintiff must show that she was replaced by a "sufficiently younger person" to raise an inference of discrimination. Showalter, 190 F.3d at 235. In order for a plaintiff to satisfy the "sufficiently younger" standard, the plaintiff need not demonstrate any particular age difference. Id. at 236 (citations omitted). The Third Circuit

has stated, however, that a one year age difference is not sufficient. Id.

Although the burden is on the plaintiff to establish a prima facie case of age discrimination, Kehres failed to introduce any evidence as to the age of her replacement, Gene Fisher. According to Kline's testimony, Fisher was either 54 or 55 years old. Defendants' Exhibit 1 indicates that Kehres was born in 1946, and Fisher was born in 1948. Depending on each individual's month of birth, then, the Court finds that Fisher was at least one year older than Kehres, but not more than two years older than Kehres. Based on this evidence, the Court finds that Fisher was not sufficiently younger than Kehres to raise an inference of age discrimination. Thus, the plaintiff has failed to establish a prima facie case of age discrimination under the ADEA.

B. Step Two - The Defendants Must Articulate Legitimate, Nondiscriminatory Reasons for the Termination

Assuming that the plaintiff has established a prima facie case for sex discrimination, the burden of production now shifts to the defendants to articulate a legitimate, nondiscriminatory reason for the adverse action. See McDonnell Douglas, 411 U.S. at 802-03; Burdine, 450 U.S. at 253. Kline articulated two legitimate, nondiscriminatory reasons for the

termination. Kline decided to fire Kehres because she failed to follow Tri-Valley's "give and owe" policy, and because Kehres failed to follow proper procedures related to Pennsylvania's PACE program.

As to the first reason, the Court accepts Kline's testimony that it was important for every Tri-Valley pharmacist to follow the same "give and owe" procedure so that there was never a question if the pharmacy owed a customer more medication. Tri-Valley Pharmacy operates pursuant to a license issued by the Pennsylvania State Board of Pharmacy. The Court accepts Kline's testimony that the State Board of Pharmacy could fine or suspend Tri-Valley's license if it is found to have committed mistakes in filling prescriptions.

As to the second reason, the Court accepts Kline's testimony that Kehres' action in charging E.H. less than the retail price of the drug could impact Tri-Valley's eligibility to participate in the PACE program. According to Kline's testimony, which Kehres did not dispute, PACE regulations require a pharmacy to charge PACE the same amount for a prescription that the pharmacy would charge a customer without PACE benefits. By charging E.H. only \$6.00 for the medication, Tri-Valley would be in violation of PACE rules if it later charged PACE more than \$6.00 for that same drug.

The Court finds that the defendants satisfied their

burden of production to articulate legitimate, nondiscriminatory reasons for Kehres' termination.

C. Step Three - The Plaintiff Must Establish that the Defendants' Reasons Are a Pretext

As the defendants have articulated legitimate, nondiscriminatory reasons for the plaintiff's discharge, the plaintiff must now prove, by a preponderance of the evidence, that the defendants' articulated reasons were not the real reasons, but were a pretext for discrimination. See Burdine, 450 U.S. at 253. The plaintiff can meet this burden by proving, through circumstantial evidence, that the defendants' reasons for her termination are "unworthy of credence." Ryder, 128 F.3d at 136 (citations omitted).

Kehres contends that if she had been a younger or male employee, she would not have been fired for the alleged deficiencies in her job performance. The plaintiff argues that: (1) other pharmacists were not disciplined when they failed to follow comparable policies; (2) the defendants' "give and owe" policy was not that important and did not constitute a valid basis for firing Kehres; (3) the incident related to E.H.'s PACE benefits was not sufficiently serious to warrant firing Kehres; and (4) the defendants' decision to fire Kehres was inconsistent with their prior behavior, including the defendants' positive evaluations of Kehres' job performance, April Kline's comments

related to her satisfaction with Kehres' job performance, and Jeffrey Kline's actions in approving vacation time for Kehres. The Court will address each of these arguments in turn.

First, the plaintiff contends that other pharmacists were not disciplined when they failed to follow Tri-Valley's "give and owe" policy or failed to follow procedures related to the PACE prescription benefits program. Evidence of the defendants' treatment of individuals outside the protected class who committed comparable infractions of the employer's policies is "especially relevant" to establish an employer's discriminatory intent. See McDonnell Douglas, 411 U.S. at 804. The record is devoid of any evidence, however, to support an allegation that other pharmacists committed comparable infractions.

The plaintiff failed to identify another pharmacist who mis-charged a patient for a prescription or failed to follow proper procedures related to the PACE program. Although the plaintiff attempted to introduce evidence to establish that other pharmacists did not follow Tri-Valley's "give and owe" policy, the evidence adduced at trial actually supports the defendants' position that Kehres failed to follow the policy.

The plaintiff suggests that the "give and owe" slips found in the basement of her home, with the initials of other pharmacists, support her contention that other pharmacists failed

to follow Tri-Valley's "give and owe" policy. The Court does not find the plaintiff's testimony on this issue credible.

Pursuant to Tri-Valley's policy, these "give and owe" tags should have been attached to the back of the customers' original prescriptions and filed in a cabinet at the pharmacy after the pharmacist filled the "owe" part of the prescriptions. The initials on the tags only indicate which pharmacist filled the "give" part of the prescription, and this pharmacist is not responsible for filing the tag.

However these tags may have ended up in Kehres' home, they do not support the plaintiff's contention that other pharmacists failed to follow the "give and owe" procedures. This evidence actually supports the defendants' position that Kehres failed to follow proper procedures. The tags came from the store where Kehres was employed as the full-time pharmacist, and the tags were found in Kehres' possession after she was fired.

Second, the plaintiff attempts to discredit the defendants' reasons by suggesting that Tri-Valley's "give and owe" policy was not that important and not a valid basis for firing Kehres. The Court accepts the defendant's testimony that it is very important, for both administrative and licensing purposes, for all pharmacists to follow the same policy when dispensing medication to patients. The Court also accepts the defendant's testimony that he attempted, on three different

occasions, to address Kehres' failure to follow the proper procedure.

Third, the plaintiff contends that the incident involving E.H.'s PACE benefits was not serious enough to warrant firing her. The Court does not find the plaintiff's testimony on this issue credible.

The plaintiff knew that the patient was not eligible for PACE benefits at the time that she filled the prescription, and the plaintiff had no way of knowing whether the patient's benefits would be reinstated. Even if the patient's benefits were reinstated, the Court accepts Kline's testimony that the pharmacy would not be reimbursed for a prescription that was filled during the period of ineligibility.

The plaintiff appears to focus on the relatively small dollar amount of the transaction. The plaintiff's argument misses the point of the defendant's position. Not only did Kehres intentionally mis-charge a patient for a prescription, she also failed to follow her supervisor's instructions to collect the money from the patient.

Further, the Court accepts Kline's testimony that he believed Kehres' actions could jeopardize Tri-Valley's eligibility to participate in the PACE program. Kehres failed to introduce any evidence to rebut this testimony. Whether this is actually true or not, the Court accepts this testimony as



evidence of the defendant's intent when he fired Kehres.

Fourth, the plaintiff argues that the defendants' decision to fire her was inconsistent with their evaluations of Kehres' job performance, April Kline's comments related to her satisfaction with Kehres' job performance, and Jeffrey Kline's actions in approving vacation time for Kehres. The Court does not find this evidence persuasive. The evaluations completed by Kline and his father were specifically intended for probation purposes only. The latest evaluation introduced at trial by the plaintiff was dated December 26, 2001. This evaluation was completed approximately two months before Kehres was fired and before the incident involving E.H.'s PACE benefits. Likewise, April Kline told Kehres that they were happy with her job performance before Jeffrey Kline learned of Kehres' conduct. The fact that Jeffrey Kline approved vacation for Kehres in January, 2002, for a time period in May, 2002, actually supports the defendants' position that the decision to fire Kehres was not made until after Kline learned the details of the E.H. incident.

Even assuming that the plaintiff met her initial burden to establish a prima facie case for each of her claims, the Court finds that the plaintiff failed to carry her ultimate burden of persuasion. The defendants articulated legitimate, non-discriminatory reasons for their decision to fire the plaintiff. The plaintiff then failed to establish, by a preponderance of the

evidence, that the defendants' reasons were a pretext for unlawful discrimination. The plaintiff failed to introduce any evidence to suggest that age or sex played any role in the defendants' decision to fire her. The Court hereby enters judgment for the defendants and against the plaintiff on all claims.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBRA KEHRES	:	CIVIL ACTION
	:	
v.	:	
	:	
JEFFREY KLINE, et al.	:	NO. 03-6108

ORDER

AND NOW, this 7th day of December, 2004, after a bench trial held on August 27, 2004, IT IS HEREBY ORDERED that judgment is entered for the defendants and against the plaintiff for the reasons stated in the Memorandum of today's date.

BY THE COURT:

/s/ Mary A. McLaughlin

MARY A. McLAUGHLIN, J.